

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
(TOLEDO DIVISION)**

<b>CITY OF FINDLAY,</b>	:	
<b>An Ohio Municipal Corporation</b>	:	
	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	
	:	
	:	<b>Case No.</b>
<b>v.</b>	:	
	:	
<b>ARGONAUT INSURANCE COMPANY,</b>	:	
	:	
<b>Defendant.</b>	:	

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**NOTICE OF REMOVAL**

Defendant, Argonaut Insurance Company, by and through its undersigned counsel, hereby files this Notice of Removal, and in support thereof, states as follows:

1. On March 2, 2018, plaintiff City of Findlay (“Findlay”) commenced an action against Argonaut Insurance Company (“Argonaut”) in Ohio state court by filing a complaint in the Common Pleas Court of Hancock County, Ohio, Case No. 2018-CV-69. Plaintiff’s complaint is attached hereto as Ex. A.

2. The complaint was served on Argonaut on March 12, 2018. *See* Ex. A at 5.

3. Plaintiff’s complaint alleges that for the last five years, it has been defending itself against certain claims alleged in an underlying lawsuit, including substantial appellate practice before both the Ohio intermediate appellate court and the Supreme Court of Ohio.

4. More specifically, plaintiff’s complaint alleges that on May 17, 2013, Gary L. Bibler and Yvonne M. Bibler filed a lawsuit against Findlay – styled *Bibler, et al. v. Stevenson, et al.*, Case No. 2013 (Ohio Com. Pl. Ct. Hancock County) (“the Underlying Action”) – seeking damages in connection with an automobile accident that occurred on May 27, 2011, alleging that

“Findlay was negligent in keeping the public roads in repair and other negligent failure to remove obstructions from the public roads.” *See* Ex. A 1, ¶ 4. A copy of the complaint filed in the Underlying Action is attached hereto as Ex. B.

5. In this action, Findlay seeks a defense from Argonaut against the claims asserted against it in the Underlying Action, as well as indemnity for any judgment that potentially may be entered against Findlay in that action, pursuant to an insurance policy issued by Argonaut – policy number PE 4621526-00 – that was in effect between July 21, 2010 and July 21, 2011 and which affords commercial general liability coverage subject to the terms, conditions, exclusions and conditions in the policy. *See* Ex. A at ¶¶ 3, 9, 13.

6. According to Findlay’s complaint, the trial court entered summary judgment in favor of Findlay in the Underlying Action on April 8, 2014 and May 14, 2014 on the basis that Findlay was “immune to liability in accordance with Ohio Revised Code Chapter 2744.” *Id.* at ¶ 5.

7. Thereafter, the plaintiffs in the Underlying Action apparently filed a Notice of Appeal to the Third District Court of Appeals and the appellate court, in turn, affirmed the trial court’s decision granting summary judgment to Findlay on its immunity defense on September 14, 2015. *Id.* at ¶¶ 6, 7.

8. Findlay’s complaint alleges that on December 29, 2016, however, the Supreme Court of Ohio reversed the 9/14/15 decision of the Third District Court of Appeals and remanded the matter back to the trial court in the Underlying Action for further proceedings consistent with the high court’s opinion. *Id.* at ¶ 8.

9. According to the complaint, a subsequent motion for reconsideration Findlay filed in the Underlying Action was denied on March 15, 2017. *Id.* at ¶ 8.

10. On or about May 24, 2017, six years after the automobile accident at issue in the Underlying action, Argonaut denied coverage Findlay's untimely request for defense and indemnity under the Argonaut policy based on Findlay's breach of the policy's notice and cooperation conditions. *Id.* at ¶ 9.

11. According to the allegations in the complaint filed by the plaintiffs in the Underlying Action, as a result of Findlay's alleged negligence, Mr. Bibler (1) "has incurred ***substantial medical expenses*** and will continue to incur such expenses in the future," and (2) "has suffered pain, suffering and loss of enjoyment of life, all of which are ***permanent*** in nature and will cause him pain and disability in the future." *See* Ex. B at ¶¶ 8, 9 (emphasis added).

12. In addition, the two-count claim asserted against Findlay in the Underlying Actions seeks in excess of \$25,000 for each claim. *See* Ex. B at 3.

13. In this action, Findlay seeks insurance coverage from Argonaut not only for the amount of any judgment that may be awarded to the underlying plaintiffs for the allegedly permanent injuries and substantial and continuing medical expenses alleged in the complaint in the Underlying Action, but also for all amounts incurred by Findlay since May 2013 defending itself before the Ohio Court of Common Pleas, the Ohio Third District Court of Appeals, and the Supreme Court of Ohio against those claims.

14. According to the complaint, plaintiff Findlay is an Ohio municipal corporation. *See* Ex. A, Caption.

15. Defendant Argonaut, in turn, is a corporation organized and existing under the laws of the State of Illinois with its principal place of business located in San Antonio, Texas.

16. This Notice of Removal is timely filed within the 30-day period proscribed for removal to federal court under 28 U.S.C. § 1446(b).

17. This Court has original jurisdiction over the subject matter under 28 U.S.C. § 1332 as the parties are citizens of different states and the amount in controversy, more likely than not, exceeds \$75,000.

18. Venue is proper in this judicial district because a substantial part of the alleged events or omissions giving rise to this claim – i.e., the underlying automobile accident for which Findlay is seeking benefits from Argonaut Insurance Company – occurred in this district.

19. Promptly after filing this Notice of Removal, copies of the Notice shall be served upon counsel for the plaintiff and upon the Clerk of the Common Pleas Court for Hancock County, Ohio.

20. Attached as Ex. C is a copy of the Notice that will be promptly filed with the Clerk of the Common Pleas Court for Hancock County, Ohio after the filing of this Notice of Removal to the United States District Court for the Northern District of Ohio.

WHEREFORE, defendant Argonaut Insurance Company respectfully requests that this Court accept and take jurisdiction of this action.

Respectfully submitted,

/s/ Michael W. DeWitt

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*Attorneys for Defendant*

*Argonaut Insurance Company*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Notice of Removal was served on April 9, 2018, upon counsel listed below, via electronic mail and United States First Class Mail:

Donald J. Rasmussen, Esquire  
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/s/ Michael W. DeWitt  
Michael W. DeWitt